

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1888.02
COMPLAINT INVESTIGATOR: Sandra Scudder
DATE OF COMPLAINT: March 18, 2002
DATE OF REPORT: April 15, 2002
REQUEST FOR RECONSIDERATION: No
DATE OF CLOSURE: May 31, 2002

COMPLAINT ISSUES:

Whether the MSD of Lawrence Township violated:

- ***511 IAC 7-27-2(d) by failing to include the purpose of the case conference committee meeting in the notice sent to the parent, specifically, failing to advise the parent that a manifestation determination would be conducted; and***
- ***511 IAC 7-27-2(c) by failing to provide special education and related services to a student with a disability who has been expelled.***

During the course of the investigation, an additional issue was added, which is whether the MSD of Lawrence Township violated:

- **511 IAC 7-18-2 by failing to provide a free appropriate public education ("FAPE") to a student with a disability by failing to allow the student to return to school subsequent to a period of expulsion.**

FINDINGS OF FACT:

1. The student (the "Student") is sixteen years old and enrolled in the tenth grade. The Student is eligible for special education and related services as a student with an emotional disability ("ED").
2. The Student was suspended pending expulsion on November 2, 2001. A Notice of Manifestation Determination Case Conference with Consideration for Expulsion is dated November 2, 2001. The school advises this notice was mailed on this date following a telephone conversation with mother in which the manifestation determination was initially scheduled. Mother states she was notified of the CCC meeting but was not made aware that it was for the purpose of a Manifestation Determination. Attempts to clarify if mother received the Notice of Manifestation Determination were unsuccessful, as mother's telephone has been disconnected.
3. The Notice to Parent of Manifestation Determination Finding, dated November 6, 2001, states that CCC determined that the Student's misconduct is not a manifestation of his disability. The school did not initiate expulsion proceedings against the Student.
4. The school recommended homebound placement through after-school services at the Manifestation Determination Case Conference on November 6, 2001. The school also proposed allowing the Student to return to school in January 2002. The parent signed that she disagreed with the recommended services and did not give permission for the plan to be implemented. The school

continued to exclude the Student for an additional nine instructional days, but did not initiate formal expulsion proceedings. The tenth cumulative instructional day elapsed on November 12, 2001. The School provided no educational services to the Student between November 12 and November 20, 2001.

5. At the case conference committee meeting on November 19, 2001, the school recommended placement in the KIND school for 2 hours per day in lieu of expulsion. The parent signed agreement with the recommended services and gave permission for the plan to be implemented. The services were to begin on November 19, 2001, and the services were to continue through January 18, 2002. However, the Student attended the program for only three days. The Student declined to participate in any educational services during the remainder of the first semester. Although the School discussed truancy charges with local juvenile officials, the charges were declined due to the Student's age.
6. The school did not permit the Student to return to School subsequent to January 18, 2002, and at the case conference committee meeting on January 24, 2002, the school recommended placement at the New Directions program. The parent disagreed with the proposed placement and declined to give consent for the change in placement to occur. The School took no further action to provide educational services until mid-March 2002 at which time the local director met with the parent to discuss services to be provided to the Student. The director states that the parent agreed to the Student participating in classes via the Internet while the school obtains an additional evaluation of the Student. However, as of the date of this report, no formal CCC has been convened, the Student has no current IEP, and the School is providing no direct special education services to the Student.

CONCLUSIONS:

1. 511 IAC 7-27-2(d) states the notice of case conference committee meetings must include the purpose of the meeting. Finding of Fact #2 reflects that the notice of case conference committee meeting included the purpose of the meeting as being for manifestation determination. Therefore, no violation of 511 IAC 7-27-2(d) is found.
2. 511 IAC 7-29-2(c) states that when a student with a disability has been expelled, the public agency shall provide services to enable the student to progress appropriately in the general curriculum and provide services to enable the student to advance appropriately toward achieving the goals set out in the student's individualized education program. Finding of Fact #3 reflects that the Student was not expelled and that the parent and the School agreed to a placement in lieu of expulsion. Therefore, no violation of 511 IAC 7-29-2(c) is found.
3. 511 IAC 7-18-2 states that public school corporations shall provide a free appropriate public education (FAPE) to students who are at least three (3) years of age, but less than twenty-two (22) years of age; are identified as disabled under this article; and have not completed high school graduation requirements and received a diploma. A FAPE includes, among other things, special education and related services provided in conformity with an IEP that satisfies the requirements of 511 IAC Article 7. Findings of Fact #4 reflects that the School failed to provide educational services, in accordance with 511 IAC 7-29-1, to a student who has been suspended for more than ten cumulative instructional days. Finding of Fact #5 indicates that the Student's IEP dated November 19, 2001, expired on January 18, 2002. Findings of Fact #6 and #7 reflect that no new IEP has been developed since the previous one expired and that the School has provided no services to the Student since that time. The School failed to provide a FAPE to the Student subsequent to the tenth

cumulative instructional day of suspension and again subsequent to the expiration of the most recent IEP. Therefore, a violation of 511 IAC 7-18-2 is found

The Department of Education, Division of Exceptional Learners requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of Lawrence Township shall immediately reconvene a case conference committee meeting to determine an agreed upon IEP for the Student. In developing the Student's IEP, the case conference committee shall determine the nature and amount of compensatory services to be provided to the Student as a result of the interruption of services from November 12 to November 19, 2001, and from the failure to provide special education services since the expiration of the November 19, 2001, IEP. The CCC Report/IEP shall clearly document the case conference committee's consideration of the compensatory services. A copy of the CCC Report/IEP shall be submitted to the Division of Exceptional Learners no later than May 1, 2002.

In the event that no agreement is reached regarding special education services or placement by May 1, 2002, the School shall immediately pursue its due process remedies (mediation/due process hearing) to determine the appropriate services and placement for the Student.

DATE REPORT COMPLETED: April 15, 2002

